IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.337 OF 2006

IN

NOTICE OF MOTION NO.4612 OF 2005

IN

S.C.SUIT NO.4640 OF 2005

Nair Shashi K. ...Appellant

Versus

Smt.Savitaben Ramji Patel ...Respondent

.....

Mr.P.K.Dhakephalkar i/b Mr.Amit Sheth for Appellant.

Mr.A.S.Uraizee with Mr.M.V.Singh & Ms.Shirin for Respondent.

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CORAM: A.M.KHANWILKAR, J.

JUNE 22, 2006.

P.C.

1. This Appeal takes exception to the Judgment and Order dated 17th/18th March 2006 passed by the City Civil Court, Greater Bombay in Notice of Motion No.4162 of 2005 in S.C.Suit

NO.4640 of 2005. By this decision, the Court below has passed mandatory order against the Appellant as also restrained the Appellant in terms of reliefs (a) and (c) of the Notice of Motion. Reliefs (a) and (c) of the Notice of Motion read thus :

> "(a) that pending the hearing and final disposal of the Suit, this Hon'ble Court may be pleased to issue interim Mandatory Order and Injunction Order thereby directing that the Defendant shall stop conducting the aforesaid Suit Hotel Business of "Nightingale and Permit Room & Restaurant" situated at Shop No.11, Nasserwanji Petit Street, (Behind Apsara Cinema), Grant Road, Mumbai - 400 007, and shall return the duplicate key given to him by the Plaintiff/Owner and remove his belongings without carrying on any business."
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> "(c) in the alternative to above Prayer Clause (b), that pending the hearing and final disposal of the Suit, this Hon'ble Court may be pleased to restrain the Defendant by himself, servants, agents, representatives and person/s claiming through or under him, from creating any third party interest and/or inducting any third party in respect of the said Suit Hotel Business on any basis and in any manner whatsoever."

2. The Trial Court has found as of fact that there was no dispute that the Appellant was conducting the hotel business in terms of the

Conducting Agreement executed in his favour on 12th June 2003 which was renewed from time to time by both the parties and which has eventually expired on 11th March 2006. The fact that the parties had entered into such agreement is virtually conceded by the Appellant. The execution of the documents in question by the Appellant is not disputed. In fact, in the communications exchanged between the parties through Advocate, the Appellant's Advocate has conceded the position that the Appellant was running the hotel business as Conductor appointed under the Agreement dated 12th June 2003. If this is the fact situation, there is no infirmity in the ultimate order passed by the Trial Court.

3. Counsel for the Appellant, however, contends that in fact, the main relief pressed by the Respondent before the Trial Court was only for appointment of Court Receiver. The Appellant would have no difficulty in conceding to that relief. According to the Appellant when that relief can be granted and would meet the ends of justice, the drastic order as has been passed by the Trial Court cannot be sustained either on facts or in law. The

argument seems to be attractive. But clearly overlooks the purport of remand order passed by this Court on the earlier occasion on January 18, 2006 in Appeal from Order No.14 of 2006 between the parties, requiring the Trial Court to decide all the reliefs on its own merits.

4. Pursuant to the said remand order, the Trial Court has considered the matter afresh and proceeded to grant relief in terms of prayer clauses (a) and (c) of the Notice of Motion. That view is a possible view. Once it is accepted that the Appellant was running the Hotel business as conductor under the Agreement dated 12th June 2003, then obviously, on expiry of the Agreement on 11th March 2006 on and from that date, the Appellant will have no right to run the hotel business.

5. Understood thus, the relief which has been eventually granted by the Court below, is the appropriate relief in the fact situation of the present case. In other words, no fault can be found with either the approach or the conclusion reached by the Trial Court.

6. It was also argued on behalf of the Appellant that the relief which has been granted by the Trial Court will virtually render the suit instituted by the Appellant for declaration that he is tenant in respect of the disputed premises infructuous. In such a case, in the interest of justice, the appropriate order would have been of one of appointment of Court Receiver. Even this argument does not commend to me. I find substance in the objection taken on behalf of the Respondent that the Suit filed by the Appellant is an afterthought. The Suit has been filed only recently to raise this contention. Merely because the Suit is filed, that does not mean that the Appellant has made out any case to support the relief claimed in the said Suit. On the other hand, it is conceded by the Appellant that he had executed Conducting Agreement and also accepted his status as one under the Conducting Agreement. It was contended that the Applicant has spent substantial amount during the relevant period. That, however, will not alter the status of the Appellant. The fact remains that the tenure of

Conducting Agreement has expired. Viewed thus, there is no substance in this submission. Hence, this Appeal should fail. The same is dismissed.

7. At this stage, Counsel for the Appellant submits that interim protection granted to the Appellant be continued to enable the Appellant to take up the matter in appeal, if so advised. As two Courts have considered the case of the parties and on analysis of the documents on record, it is obvious that the stand taken by the Appellant is only to gain time and protract the proceedings pending between the parties. In the fact situation of the present case, I see no reason to accede to this request, for the simple reason that the Appellant has no legal right to remain in possession on and from 11th March 2006. Hence, this prayer is rejected.

A.M.KHANWILKAR, J.